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SPECIAL CIVIL APPLICATION NO. 250 OF 1981

Date of Decision : 30.1.1996

For Approval & Signature

THE HON'BLE MR. JUSTICE A.R DAVE

AND

THE HON'BLE MR. JUSTICE

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?

5. Whether it is to be circulated to the Civil Judge ?

Mr. P.J.Vyas , learned Advocate for the Petitioner

Mr. Bhavir Patel for Mr.A.J.Patel, Learned Advocate for Respondent No.3.

CORAM : A.R DAVE, J.  
30.1.1996

ORAL JUDGMENT

The petitioner had approached the Mamlatdar & ALT, Petlad, under the provisions of The Bombay Tenancy & Agricultural Lands Act, 1948 ( hereinafter to be referred to as "the Act" ) with an application that he be declared a tenant in respect of the land in question which was owned by respondent no.1 ( Patel Dahyabhai Mathurbhai) and his son Shri Manubhai Dahyabhai. In pursuance of the said application, proceedings under the Act had been initiated by the Mamlatdar & ALT and ultimately by an order dated 31st March 1964 ( Annex.A to the petition ), he came to a conclusion that the petitioner was a tenant in respect of the land in question. The said order was challenged before the Deputy Collector, District Kheda by an appeal by Shri Dahyabhai Mathurbhai- father of respondent no.4 who was the owner of the land in question. It was contended on behalf of the owner that in the proceedings before the Mamlatdar & ALT, he ( Dahyabhai ) was not properly represented and, therefore, the order passed by the Mamlatdar & ALT was illegal. The Deputy Collector had ultimately remanded the matter by his order dated 20th November 1966 to the Mamlatdar & ALT so that the entire matter can be decided afresh after hearing the concerned parties. Being aggrieved by the above-referred order dated 20th November 1966, Revision Application was filed by the present petitioner before the Gujarat Revenue Tribunal. By an order dated 29th January 1968 ( Annex.C to the petition ), the Tribunal was pleased to remand the matter to the Deputy Collector so that he can ascertain whether the constituted Attorney of Shri Dahyabhai father of respondent no.4, was in fact served with the notice and whether he was given an opportunity of being heard.

Ultimately, in pursuance of the above-referred order dated 29th January 1968 passed by the Tribunal ( Annex.C to the petition ), the matter was sent to the Deputy Collector, District Kheda at Petlad. Before the said Deputy Collector, in the above referred proceedings, a pursis was submitted by the concerned parties including the present petitioner stating the fact that the petitioner was not a tenant in respect of the lands in question, but for some time, he had looked after the land in question and had cultivated the same as a member of the family. Thus, he had specifically stated that he was not a tenant. In pursuance of the above-referred pursis given to the Deputy Collector, District Kheda and having his office at Petlad, an order was passed on 2nd September 1968 ( Annex.D to the petition ) whereby it was held that the petitioner was not a tenant.

A copy of the above-referred order whereby it was held that the petitioner was not a tenant, was duly served upon the petitioner on or about 12th October, 1968 as admitted by the petitioner's advocate before the Gujarat Revenue Tribunal. In spite of service of the said order on or about 12th October, 1968, it is clear that the petitioner did not challenge the validity of the said order for a considerable long period of

about 10 years. On or about 14th April, 1979 he filed Revision Application for challenging the validity of the above-referred order dated 2nd September, 1968 passed by the Deputy Collector whereby it was held that the petitioner was not a tenant. The above-referred Revision Application, being Application No. TEN-BA-326/78 was heard by the Tribunal and was ultimately decided against the present petitioner on 26th September, 1979. Thereafter, the petitioner filed Review Application being Application No. TEN-CA-66/79 which also came to be rejected by the Tribunal on 26th June, 1980.

Being aggrieved by the above-referred orders dated 26th September, 1979 and 26th June, 1980 passed by the Tribunal, the petitioner has approached this Court under Articles 226 & 227 of the Constitution of India with a prayer that the above-mentioned orders be quashed and set aside.

The Tribunal had rightly dismissed the Revision Application of the petitioner on the ground that the said revision application suffered from the vice of delay and laches as the petitioner had challenged the validity of the order passed by the Deputy Collector dated 2nd September, 1968 after more than 10 years. It is also pertinent to note that the petitioner himself had given a pursis wherein it was stated by him that he was not a tenant in respect of the land in question and on the basis of that pursis, the Deputy Collector had passed the order dated 2nd September 1968. For the above-referred main two reasons, the petitioner's revision application was dismissed and the Tribunal did not find any substance even in the Review Application and, therefore, the Review Application was also rejected.

Learned Advocate Shri P.J.Vyas for the petitioner vehemently argued all the points raised in the memo of the petition and he submitted that there was no delay in filing the revision application as he was dispossessed somewhere in 1978 and, therefore, he was constrained to file the Revision Application in 1979. According to him, the petitioner was in actual possession of the land in question and, therefore, there was no delay. It was further submitted by him that the pursis referred to by the Deputy Collector in his order dated 2nd September, 1968 was signed by the petitioner under some incorrect information or in pursuance of a fraud.

Upon perusal of the record, it is clear that the Revision Application was rightly dismissed on the ground of delay and laches. The petitioner had challenged the validity of the order of the Deputy Collector after considerable long period of 10 years. In the mean time, the land in question was also sold by its owners to present respondent no.3. It is to be noted further that the Deputy Collector was justified in passing the order

holding that the petitioner was not a tenant in pursuance of a pursis signed by the petitioner.

Mr. P.J.Vyas vehemently contended that it was not open to the Deputy Collector to hold that the petitioner was not a tenant because it was not open to him to make such a declaration or to pass such an order especially in view of the fact that the Tribunal had remanded the matter to the Deputy Collector to ascertain certain facts with regard to the execution and subsistence of power of attorney. It is true that the Tribunal had remanded the matter to the Deputy Collector so as to find out whether the owner of the land in question had appointed any constituted attorney on his behalf and he had to ascertain whether necessary formalities under the Act were done by the Mamlatdar & ALT before coming to a conclusion that the petitioner was a tenant in respect of the land in question.

It is however very clear that the petitioner had given a pursis before the Deputy Collector stating the fact that he was not a tenant in respect of the land in question. In view of such a pursis being given by the petitioner, it was not at all necessary for the Deputy Collector to find out whether Bhagwatibhai was a lawfully constituted attorney and whether requisite notice was served upon the owner or his constituted attorney.

In view of above-referred facts, I do not find any illegality in the impugned orders and, therefore, the petition is dismissed. Rule is discharged with no order as to costs.